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IN THE
COURT OF APPEALS OF INDIANA

DAVID LAURIDSEN,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 45A04-0610-CV-603
	)	
JEANETTE LAURIDSEN,	)	
	)	
Appellee.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Elizabeth F. Tavitas, Judge
Cause No. 45D03-0201-DR-459

March 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

David Lauridsen ("Father") appeals from the trial court's order modifying his child support payments to Jeanette Lauridsen ("Mother"). Father raises four issues for our review, namely:

1. Whether the trial court erred in not imputing income to Mother even though, in a prior modification order, the court had imputed income to her.

2. Whether the court erred in determining Father's parenting time credit.

3. Whether the court erroneously included a capital gain as part of Father's income.

4. Whether the court's finding that Father is not entitled to a credit for the children's health insurance premiums paid through his S corporation is clearly erroneous.

We affirm in part, reverse in part, and remand with instructions.

FACTS AND PROCEDURAL HISTORY

After more than eight years of marriage, Mother filed a petition for dissolution in the Lake Superior Court. On June 12, 2003, the trial court dissolved the marriage and incorporated into its order the parties' agreements regarding a property settlement and coparenting plan. Pursuant to the coparenting plan, the parties shared joint legal custody of their three minor children.

The coparenting plan described the parties' respective parenting time as follows:

a. The Mother shall have parenting time with the children beginning Tuesday after school until Saturday morning at 10:00 a.m. the first week after the entry of this decree.

b. During the second week after the entry of this decree, the Mother shall have parenting time with the children from Sunday morning at

9:00 a.m. until Monday after school; from Tuesday after school until the children leave for school Wednesday morning; from Thursday after school until Saturday morning at 10:00 a.m.

c. During the third week after the entry of this decree, the Mother shall have parenting time with the children from Tuesday after school until Saturday morning at 9:00 a.m.

d. During the fourth week after the entry of this decree, the Mother will have parenting time with the children from Sunday morning at 9:00 a.m. until Monday after school; from Tuesday after school until the children go to school Wednesday morning; from Thursday after school until Saturday morning at 10:00 a.m.

e. The above parenting time schedule shall continue throughout the whole year, except each party shall be entitled to one (1) full week of parenting time with the children during the summer, upon thirty (30) days written notice to the other party.

f. The Father shall be with the children when it is not the Mother's scheduled parenting time.

* * *

j. The parties shall follow the Indiana Parenting Time Guidelines with regard to holiday time.

Appellant's App. at 106-07. With regard to child support, the coparenting plan required Father to pay Mother $143 per week.

In February of 2004, Father filed a petition to modify child support on the basis of a change in his employment status. Specifically, the trial court noted that Father's self-owned business had closed on January 31, 2004, due to debt incurred by "bad business decisions." Id. at 94. The trial court subsequently modified Father's child support obligation to $16.94 per week, based on Father's expected annual income of approximately $25,000 ("the first modified order").

On September 23, 2005, Mother filed a petition to modify child support based on Father's actual income for 2003 and 2004, which totaled, respectively, $41,264 and $42,829. The trial court granted a hearing on Mother's petition. In addition to the admission of Father's 2003 and 2004 tax returns, Father testified that he expected to earn approximately $40,000 in 2005. Father earned his 2003-05 incomes from a new construction business he had started. In contrast, Mother, a licensed beautician working part-time, had an income of $12,429 in 2004.

On June 23, 2006, the trial court found that Father had 156 overnights of parenting-time credit, consistent with the first modified order. The court also found that Father was not to be given credit for health care expenses paid for by his new business, and it increased his child support obligation to $154.12 per week ("the second modified order") based on changed circumstances. This appeal ensued.

DISCUSSION AND DECISION

Our supreme court has addressed appellate court deference to trial court findings in family law matters, including findings of "changed circumstances" within the meaning of Indiana Code Section 31-16-8-1:

> Whether the standard of review is phrased as "abuse of discretion" or "clear error," this deference is a reflection, first and foremost, that the trial judge is in the best position to judge the facts, to get a feel for the family dynamics, to get a sense of the parents and their relationship to their children—the kind of qualities that appellate courts would be in a difficult position to assess. Secondly, appeals that change the results below are especially disruptive in the family law setting. And third, the particularly high degree of discretion afforded trial courts in the family law setting is likely also attributable in part to the "fluid" standards for deciding issues in family law cases that prevailed for many years.

> The third of these reasons has largely fallen by the wayside as the Legislature and [the Supreme] Court have promulgated a series of statutes, rules, and guidelines—standards that bring consistency and predictability to the many family law decisions. But, the importance of first-person observation and avoiding disruption remain compelling reasons for deference.
>
> We recognize of course that trial courts must exercise judgment, particularly as to credibility of witnesses, and we defer to that judgment because the trial court views the evidence firsthand and we review a cold documentary record. Thus, to the extent credibility or inferences are to be drawn, we give the trial court's conclusions substantial weight. But to the extent a ruling is based on an error of law or is not supported by the evidence, it is reversible, and the trial court has no discretion to reach the wrong result.

MacLafferty v. MacLafferty, 829 N.E.2d 938, 940-41 (Ind. 2005) (alteration in original).

In the present case, the trial court made special findings in the second modified order. When the trial court has entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52, we apply the following two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. Staresnick v. Staresnick, 830 N.E.2d 127, 131 (Ind. Ct. App. 2005). The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. Id. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. Id. We neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. Id. We review conclusions of law de novo. Id.

Issue One: Mother's Income

Father first challenges the trial court's evaluation of Mother's income in the second modified order. Specifically, Father argues that the court erred by using a "change in methodology" in computing Mother's income and in not following the "law of the case" by imputing income to Mother in the second modified order, as it had in the first modified order. Appellant's Brief at 12; Reply at 7. In their briefs on appeal, both parties maintain that Mother's "employment status was consistent from the time of the dissolution through both modification hearings." Appellee's Brief at 6 n.1.

In support of his position that the court erroneously changed its methodology, Father relies on Carmichael v. Siegal, 754 N.E.2d 619, 627 (Ind. Ct. App. 2001). In Carmichael, we held, "for the purpose of determining whether there was a substantial change in circumstances justifying the modification of a child support obligation, . . . it is improper for a trial court to use inconsistent formulas from one proceeding to the next in calculating an obligor's available income." Id. (emphasis added). However, Carmichael is inapposite here. The trial court in Carmichael had ordered that the mother's IRAs were not to be included in the determination of her income, but it later ordered that the IRAs were to be included in her income. We reversed because the trial court had fundamentally changed its formula by adding a variable, the IRAs, that it had previously omitted. Here, however, the trial court did not change its mathematical formula but altered a figure in that formula. That is, while in the first modified order the court determined Mother's income by adding her actual income to an imputed figure, in the second modified order the court merely accepted Mother's actual income. In other

words, in the second modified order, the court added actual income to an imputed income of zero. Hence, we are not persuaded by Father's position that the trial court changed its methodology.

Father also maintains that the "law of the case was that Mother's income for child support purposes was to be imputed at considerably more than her actual take-home pay." Reply at 7. We question whether the law of the case doctrine applies where the statute at issue specifically requires a trial court to consider "changed circumstances" in modifying a prior order. See Ind. Code § 31-16-8-1 (2004). Regardless, strictly applying the law of the case doctrine here would leave no room for the trial court to consider the financial resources of both parents. But, as we have stated, "[t]he financial resources of both parents are relevant in child support modification determinations and should be included in the totality of circumstances to be considered when an award is made." Weiss v. Frick, 693 N.E.2d 588, 593 (Ind. Ct. App. 1998). Thus, it was within the trial court's discretion to re-evaluate Mother's financial resources in the second modified order.

Father's appeal of the trial court's specific finding of Mother's income in the second modified order is also not well founded. Again, we will not disturb a court's special finding when the evidence supports that finding. See Staresnick, 830 N.E.2d at 131. Here, Mother's admitted 2004 tax return shows a gross income of $12,429. That figure is what the trial court found as her 2004 total income and supports the court's finding of her weekly income. We cannot say that the trial court's assessment of Mother's income in the second modified order is clearly erroneous. See id.

Issue Two: Parenting Time Credit

Father next contends that the trial court erred in finding that Father had 156 overnights with the parties' children in the prior year. Instead, Father asks that we adopt his personal records indicating the amount of parenting time he had with the children. But those records were before the trial court, and the trial court did not follow them. Hence, Father's argument on this issue also amounts to a request that we reweigh the evidence, which we will not do. See id. Further, the trial court's finding of 156 days of parenting time credit is supported by Mother's Child Support Obligation Worksheet, which directly challenged Father's assertions of his parenting time and stated that Father should be entitled to only 156 days of credit. Thus, we cannot agree with Father's position that "there was no evidence in the Record to dispute the Father's figures." Appellant's Brief at 9. The court's finding here is not clearly erroneous.

Issue Three: Father's Income

Third, Father contends that the trial court erred in including in his income a part of the proceeds from the sale on a "spec house" owned by his construction business. A "spec house" is a house built by a builder before a buyer is identified. More specifically, Father maintains that the court awarded him the assets of his construction business in the court's division of the marital property upon the dissolution of the marriage, and, as such, that property cannot now be included in income for calculations of child support. In support of his position, Father cites Kyle v. Kyle, 582 N.E.2d 842, 846-47 (Ind. Ct. App. 1991), trans. denied, in which we stated that "[w]e do not believe the terms of the property distribution should impact an order of child support."

Father's reliance on Kyle is misplaced. In Kyle, the trial court ordered the father to pay the mother $100 per month over time in compensation for the mother's share of equity in the marital home, which was awarded to the father. Thus, we held that that $100 per month was a property settlement payment that was not properly included in the definition of "weekly gross income" under Child Support Guideline 3(A)(1). Here, Father confuses the value of the spec house awarded to him with the income he derived from the sale of that asset. In other words, while the total value of the property may not be included in Father's income, any capital gain Father realized from the sale of that property is current income. This distinction is inherent in the tax accounting on the sale.

Father states in his brief that he "realized [approximately] $14,000.00 of income, as evidenced on his tax return," when the spec house sold. Appellant's Brief at 7. And during direct examination at the hearing on the Mother's modification petition, Father stated that he realized about $14,000 as capital gain in 2004. Child Support Guideline 3(A)(1) specifically includes "capital gain" within the definition of "weekly gross income." Ind. Child Support Guideline 3(A)(1). Hence, Kyle is inapposite, and the trial court's inclusion of approximately $14,000 in Father's income is not clearly erroneous.[1]

Issue Four: Health Insurance

Finally, Father maintains that the trial court erred in not giving him credit for the children's health insurance premiums. As Father phrases this issue, "[i]t is undisputed

[1] This particular one-time sale and capital gain will not be repeated. We note, however, that profit from the sale of real estate held or developed as business inventory may, in some circumstances, be treated as ordinary income. See 26 U.S.C. § 1221(a) (2007). Whatever tax accounting method is used, the gain or profit realized upon sale of property held for business purposes is considered income in calculating support. See Bass v. Bass, 779 N.E.2d 582, 594 (Ind. Ct. App. 2002) (quoting Child. Supp. G. 3(A)(2)), trans. denied.

that [the construction] company pays . . . the health insurance for the Father's children. The issue is whether the Father is entitled to a credit for the cost of the children's health insurance." Appellant's Brief at 16-17. Father's construction company is an S corporation. In the second modified order, the court stated, "[t]he Court FINDS that no credit should be given for health care expenses on behalf of [Father], as he does not pay for this." Appellant's App. at 12.

Father's S corporation paid the children's health insurance premiums. Because Father's business is an S corporation and Father is a 50% shareholder in that corporation, when those health insurance premiums are paid by the corporation, the payments are included in Father's taxable income. See IRS Publication No. 15-B, Employer's Tax Guide to Fringe Benefits (rev. Jan. 2007), at 6, available at http://www.irs.gov/pub/irs-pdf/p15b.pdf. Father presented evidence to the trial court that the cost of the health insurance premiums is $304 per month. That cost is attributed to Father as part of Father's taxable income. Thus, the trial court erred in finding that Father "does not pay for this," Appellant's App. at 12, and in not including that amount in Father's income.

Conclusion

We reverse as clearly erroneous the trial court's finding that Father did not pay the health insurance premiums for his three children. On that issue, we remand to the trial court with instructions that it consider Father's health insurance premium payments in its determination of Father's child support obligations. We affirm the trial court in all other respects.

Affirmed in part, reversed in part, and remanded with instructions.

MAY, J., and MATHIAS, J., concur.